IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.564 of 2007

Decided on: ***August 16, 2007.***

Ashok Kumar ***…Petitioner.***

VERSUS

State of Himachal Pradesh ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Petitioner: **Mr.Ramakant Sharma, Advocate.**

For the respondent: **Mr.M.A.Khan, Deputy A.G.**

Kuldip Singh, Judge (Oral)

This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in F.I.R. No.130 of 2006 under Sections 397, 34 I.P.C. registered at Police Station, Ghumarwin on 7.8.2006.

2. The facts, in brief, are that complainant Rajinder Kumar on 7.8.2006 reported at Police Station, Ghumarwin that he is a driver on Maruti Van No.HP 01D-0590 for the last about 3/4 months which is owned by Jai Ram. On 7.8.2006, he was near Dharamshala Hospital, three persons approached him and asked him fare up to Ghumarwin. They agreed and hired the van of the complainant. One person with them was weeping. The other two persons told that his father has died and, therefore, they want to reach as early as possible. They said they were having only Rs.400/- with them and

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Whether the reporters of the local papers may be allowed to see the judgment? Yes

the balance they would pay at Ghumarwin. He started at 8.30 A.M. for Ghumarwin and reached Ghumarwin at about 4 P.M. On their asking, he took the vehicle inside the hospital. One person, who was being addressed Shoki, came out of the van and went to Sethi Medical Store and shook hand with the person sitting on the counter and again came back in the van. He was asked to take a turn as their houses are 5/6 kilometres away. He turned the vehicle and proceeded as per the direction. At about 4.20 P.M. at a lonely place they asked him to stop the van and he accordingly stopped the van. Two persons, including Shoki, opened the driver's window and he was asked to come out. All three of them gave him severe beating and snatched the key of the van. Shoki started the van and drove away the vehicle. The complainant later on reported the matter to the police and an F.I.R. No.130 of 2006 dated 7.8.2006 was registered under Sections 392, 34 I.P.C. During investigation, it was found that instead of Section 392 offence under Section 397 is made out. The challan against all the accused persons has been put in the Court on 30.9.2006 and now case is pending before Fast Track Court, Ghumarwin which is fixed on 6/7-9-2007. The petitioner is involved in 31 cases. The application of the petitioner for granting bail was dismissed by Additional Sessions Judge, Ghumarwin on 9.7.2007. A list of 31 cases, in which petitioner was involved, has been produced by learned Deputy Advocate General.

3. Heard and perused the record.

4. The learned counsel for the petitioner has submitted that mother of the petitioner is suffering from depression / mental disease

for the last about 4/5 months and, therefore, he has prayed for releasing the petitioner on bail. He has submitted that pendency of other cases against the petitioner is no ground for rejection of bail. The Investigating Agency has collected no material which may entitle the Investigating Agency to pray for non grant of bail to the petitioner. He has admitted that 7 cases are pending against the petitioner. Earlier also a bail application of the petitioner was dismissed on 14.11.2006.

5. The petitioner is involved in serious offence. The challan has already been put against the petitioner and two other co-accused and now the case is pending for trial before Fast Track Court, Ghumarwin and is fixed on 6/7-9-2007. As per learned Deputy Advocate General, the petitioner was involved in 31 cases some of which are still pending. The petitioner in his application has admitted that at least 7 cases are pending against him. It appears petitioner is habitual offender. The two bail applications filed by him were dismissed on 14.11.2006 and 9.7.2007. There is no change of circumstance. In case the petitioner is released on bail, there is likelihood of his influencing the prosecution witnesses. In the facts and circumstances of the case and keeping in view the nature of the offence, the petitioner is not entitled to bail. The application is rejected.

6. The observations made in the order shall not be construed as expression of opinion on the merits of the case.

August 16, 2007 ***(Kuldip Singh), J.***

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